

Rule 8, Ariz. R. Crim. P.

SPEEDY TRIAL — Defendant may waive Rule 8 time limits explicitly or implicitly — Revised 11/2009

Rule 8, Ariz. R. Crim. P., sets strict time limits for trials to begin. However, because the Rule 8 speedy trial rules were created for the defendant's benefit, the defendant may waive his speedy trial rights under the Rules of Criminal Procedure. *State v. Greer*, 7 Ariz.App. 155, 156, 436 P.2d 933, 934 (App. 1968). The Rule 8 right to a speedy trial is not fundamental, but procedural. *State v. Henry*, 176 Ariz. 569, 578, 863 P.2d 861, 870 (1991). Rule 8 "is not a shield by which the accused may avoid trial and possible punishment by taking advantage of loopholes in the law or arithmetical errors." *State v. Guerrero*, 159 Ariz. 568, 570, 769 P.2d 1014, 1016 (1989).

For example, if the defendant requests additional time or additional time is needed on his behalf, that time is excluded from the computation of time under Rule 8 even if the defendant does not make an express waiver of his speedy trial rights. Rule 8.4(a), Ariz. R. Evid., provides that "Delays occasioned by or on behalf of the defendant" are excluded from the time limits imposed by Rules 8.2 and 8.3. In *State v. Spreitz*, 190 Ariz. 129, 945 P.2d 1260 (1997), cert. denied 523 U.S. 1027 (1998), the defendant's murder trial did not begin until more than five years after the indictment. On appeal, the defendant argued that he had not waived the time limits of Rule 8.2, Ariz. R. Evid., because the majority of the time was taken up by "the periods of time during which the state sought to admit and the defendant argued to exclude DNA evidence, during which the court had not set a trial date." *Id.* at 138, 945 P.2d at 1269. The Arizona Supreme Court stated that the "delay of over five years between arraignment

and trial warrants intensely close scrutiny" and "such a delay is presumptively prejudicial," *Id.* at 137, 945 P.2d at 1268. Nevertheless, the Court found that the defendant had waived his speedy trial rights under Rule 8, Ariz. R. Evid., because he had failed to object to the delay until after the DNA admissibility hearings were concluded. Further, defense counsel had not notified the court of the impending expiration of the Rule 8 time as required by Rule 8.1(d), Ariz. R. Evid.¹ The Court noted that a defendant "may waive speedy trial rights by not objecting to the denial of speedy trial in a timely manner," and stated, "We have held that once a defendant has let a Rule 8 speedy trial time limit pass without objection, he cannot later claim a violation that requires reversal." *Id.* at 138, 945 P.2d at 1269, *citing State v. Guerrero*, 159 Ariz. 568, 570, 769 P.2d 1014, 1016 (1989) and *State v. Adair*, 106 Ariz. 58, 60, 470 P.2d 671, 673 (1970). The Court also noted that "delays agreed to by defense counsel are binding on a defendant, even if made without the defendant's consent." *State v. Spreitz*, 190 Ariz. 129, 139, 945 P.2d 1260, 1270 (1997), *citing State v. Rodriguez*, 186 Ariz. 240, 244, 921 P.2d 643, 647 (1996). Accordingly, after excluding all of the time that the defendant had expressly waived and the time delays occasioned by or on behalf of the defendant, the Arizona Supreme Court found that the defendant was tried within the Rule 8 time limits and was not entitled to relief.

¹ Rule 8.1(d), Ariz. R. Crim. P., provides:
Duty of Defense Counsel. The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6.

In addition, a defendant must object at trial to an alleged Rule 8 speedy trial violation to preserve the issue for appeal. As the Court of Appeals stated in *State v. Vasko*, 193 Ariz. 142, 148 ¶ 25, 971 P.2d 189, 195 ¶ 25 (App. 1998):

We emphasize that the purpose of Rule 8.6 is to afford a defendant relief from a speedy trial violation *before* his untimely trial. Rule 8 also obliges a defendant to vigorously assert his speedy trial right. Thus, for example, Rule 8 requires a defendant to notify the court of an impending speedy trial deadline in order to preserve his objection to a Tule 8 violation. See Rule 8.1(d). Indeed, a speedy trial error is waived on appeal if defendant has not timely objected in the trial court. [*State v.*] *Spreitz*, 190 Ariz. [129] at 138, 945 P.2d [1260] at 1269. We believe it is consistent with this requirement to require a defendant to bring a pretrial special action to this court in order to preserve a purely technical, non-prejudicial Rule 8 violation.

Id. at 148 ¶ 25, 971 P.2d at 195 ¶ 25 [emphasis in original]. While the constitution provides a fundamental right to a speedy trial, generally, even the constitutional right to a speedy trial is waived unless asserted promptly. *State v. Schaaf*, 169 Ariz. 323, 327, 819 P.2d 909, 913 (1991), *citing State v. Adair*, 106 Ariz. 58, 60, 470 P.2d 671, 673 (1970); *State v. Guerrero*, 159 Ariz. 568, 570, 769 P.2d 1014, 1016 (1989). Because a defendant can waive a constitutional right to a speedy trial, *a fortiori* he can waive a right provided by the Rules of Criminal Procedure.